

entities, each with annual sales of less than \$3 million per year and only a handful of employees. The number of total “infringing sales” for which Defendants could be liable, if any, appears to be fewer than three units. And, of the marks for which Plaintiff has indicated a dispute, only one was allegedly used by Defendants, was on Defendant Northwind’s website for approximately one month, and was removed immediately upon notice of a dispute. Defendants believe that the attorneys’ fees that would be generated just in responding to discovery would far exceed any alleged “damages” at issue.

(4) Accordingly, Defendants respectfully suggest that referral of this matter to Magistrate Judge Valdez for mediation would benefit all parties. “[M]agistrate judges in the Northern District of Illinois have become increasingly active in mediating settlements among parties in lawsuits.” *Pesek v. Donahue*, 2006 U.S. Dist. LEXIS 26209 at *11 (N.D. Ill. Feb. 9, 2006). Defendants believe that Judge Valdez’s involvement would promptly resolve this case, particularly in light of the *de minimis* damages at issue.

(5) Defendants are prepared, under the auspices of Judge Valdez, to provide information sufficient for Plaintiff to evaluate its damages (assuming liability). In addition, Defendants’ principals would attend mediation and provide reasonable backup data (relating both to liability and damages) sufficient to settle the matter. Defendants believe that this approach would be the most cost-effective means of resolution.

(6) Defendants early on expressed an interest in settling the matter before discovery and notified Plaintiff of the nominal amount of damages at issue. Plaintiff, however, rebuffed the overture. Defendants recently reiterated their desire to discuss amicable resolution and were again turned down. Counsel for Defendants accordingly believes this case is being driven more

by emotion, rather than the merits, and that the case is an excellent candidate for magistrate-sponsored mediation.

(7) In light of the above, and in furtherance of the Defendants' goals to minimize costs to the parties, Defendants further request that, should this matter be referred to Judge Valdez for mediation, this Court temporarily stay discovery, including court-set and discovery deadlines, during the mediation process.

WHEREFORE, for the reasons stated herein, Defendants respectfully request that this Court grant Defendants' Motion for Referral to Magistrate for Settlement Mediation and further temporarily stay discovery, including discovery deadlines set by this Court, during settlement discussions.

Dated: May 19, 2008

Respectfully submitted,

By: /s/ Jeana R. Lervick

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